

after the break ends, unless the individual is ineligible or subject to disqualification under the applicable State law or § 617.18 (b)(2).

(2) *On and after November 21, 1988.* The conditions stated in paragraphs (a)(2) and (a)(3) of this section shall not be applicable to an individual who is enrolled in or participating in a training program approved under § 617.22 (a), or during a break in the training program if (as determined for the purposes of § 617.15(d)) the individual participated in the training immediately before the beginning of the break and resumes participation in the training immediately after the break ends.

[59 FR 932, Jan. 6, 1994]

§ 617.18 Disqualifications.

(a) *State law applies.* Except as stated in paragraph (b) of this section and § 617.55(b), an individual shall not be paid TRA for any week of unemployment the individual is or would be disqualified to receive UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law which apply to EB claimants and which are consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970.

(b) *Disqualification of trainees—(1) State law inapplicable.* A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

(i) Is enrolled in or is participating in a training program approved under § 617.22(a); or

(ii) Refuses work to which the individual has been referred by the State agency, if such work would require the individual to discontinue training, or if added to hours of training would occupy the individual more than 8 hours a day or 40 hours a week, except that paragraph (b)(1)(ii) of this section shall not apply to an individual who is ineligible under paragraph (b)(2) of this section; or

(iii) Quits work, if the individual was employed in work which was not suitable (as defined in § 617.22(a)(1)), and it was reasonable and necessary for the individual to quit work to begin or continue training approved for the individual under § 617.22(a).

(2) *Trainees ineligible.* (i) An individual who, without justifiable cause, fails to begin participation in a training program which is approved under § 617.22(a), or ceases to participate in such training, or for whom a waiver is revoked pursuant to § 617.19(c), shall not be eligible for basic TRA, or any other payment under this part 617, for the week in which such failure, cessation, or revocation occurred, or any succeeding week thereafter until the week in which the individual begins or resumes participation in a training program that is approved under § 617.22(a).

(ii) For purposes of this section and other provisions of this Part 617, the following definitions shall be used:

(A) *Failed to begin participation.* A worker shall be determined to have failed to begin participation in a training program when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program, without justifiable cause.

(B) *Ceased participation.* A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.

(C) *Justifiable cause.* For the purposes of paragraph (b)(2) of this section, the term “justifiable cause” means such reasons as would justify an individual’s conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual’s control and reasons related to the individual’s capability to participate in or complete an approved training program.

(c) *Disqualification while in OJT.* In no case may an individual receive TRA for any week with respect to which the worker is engaged in on-the-job training.

[51 FR 45848, Dec. 22, 1986, as amended at 53 FR 32350, Aug. 24, 1988; 59 FR 932, Jan. 6, 1994]

§ 617.19 Requirement for participation in training.

(a) *In general—(1) Basic requirement.* (i) All individuals otherwise entitled to

basic TRA, for each week, must either be enrolled in or participating in a training program approved under §617.22(a), or have completed a training program approved under §617.22(a), as provided in §617.11(a)(2)(vii), in order to be entitled to basic TRA payments for any such week (except for continuation of payments during scheduled breaks in training of 14 days or less under the conditions stated in §617.15(d)). The training requirement of paragraph (a)(1)(i) of this section shall be waived in writing on an individual basis, solely in regard to entitlement to basic TRA, if approval of training for the individual is not feasible or is not appropriate, as determined in accordance with paragraph (a)(2) of this section.

(ii) As a principal condition of entitlement to additional TRA payments, all individuals must actually be participating in a training program approved under §617.22(a) for each week, and for all weeks beginning on and after November 21, 1988 (except for continuation of payments during breaks in training under the conditions stated in §617.15(d)). Paragraph (a)(2) of this section is not applicable in regard to additional TRA, and the participation in training requirement of paragraph (a)(1)(ii) of this section may not be waived under any circumstances.

(2) *Waiver of participation requirement.* When it is determined, in accordance with paragraph (a)(2) of this section, that it is not feasible or is not appropriate (as such terms are defined in paragraph (b) of this section) to approve a training program for an individual otherwise entitled to basic TRA, the individual shall be furnished a formal written notice of waiver, with an explanation of the reason(s) for the waiver and a statement of why training is not feasible or is not appropriate in the case of such individual. At a minimum, the written statement furnished to the individual shall contain information required by §617.50(e) as well as the following information:

- (i) Name and social security number of the individual;
- (ii) Petition number under which the worker was certified;
- (iii) A statement why the agency has determined that it is not feasible or is not appropriate to approve training for

the individual at that time, and the reason(s) for the finding;

(iv) A statement that the waiver will be revoked at any time that feasible and appropriate training becomes available;

(v) Any other advice or information the State agency deems appropriate in informing the individual;

(vi) Signature block (with signature) for the appropriate State official; and

(vii) Signature block (with signature) for the worker's acknowledgement of receipt.

(3) *Denial of a waiver.* In any case in which a determination is made to deny to any individual a waiver of the participation requirement, the individual shall be furnished a formal written notice of denial of waiver, which shall contain all of the information required of formal written notices under paragraph (a)(2) of this section.

(4) *Procedure.* Any determination under paragraph (a)(2) or paragraph (a)(3) of this section shall be a determination to which §§617.50 and 617.51 apply, including the requirement that any written notice furnished to an individual shall include notice of the individual's appeal rights as is provided in §617.50(e).

(b) *Reasons for issuing a waiver.* (1) For the purposes of paragraphs (a)(2) and (a)(3) of this section, a waiver of the participation in training requirement shall be issued to an individual only upon a supported finding that approval of a §617.22(a) training program for that individual is not feasible or is not appropriate at that time.

(i) *Feasible and appropriate.* For the purposes of this section:

(A) *Feasible.* The term *feasible* means:

(1) Training is available at that time which meets all the criteria of §617.22(a);

(2) The individual is so situated as to be able to take full advantage of the training opportunity and complete the training; and

(3) Funding is available to pay the full costs of the training and any transportation and subsistence expenses which are compensable. The funding referred to in paragraph (b)(1)(i)(A)(3) of this section includes not only TAA program funds but also all other funds available under any of the provisions of

the Title I, Subchapter B of the Workforce Investment Act or any other Federal, State or private source that may be utilized for training approvable under § 617.22(a). Further, the individual's situation in respect to undertaking training (as referred to in paragraph (b)(1)(i)(A)(2) of this section) shall include taking into account personal circumstances that preclude the individual from being able to participate in and complete the training program, such as the availability of transportation, the ability to make arrangements for necessary child care, and adequate financial resources if the weeks of training exceeds the duration of UI and TRA payments.

(B) *Appropriate*. The term *appropriate* means being suitable or compatible, fitting, or proper. Appropriate, therefore, refers to suitability of the training for the worker (including whether there is a reasonable prospect which is reasonably foreseeable that the individual will be reemployed by the firm from which separated), and compatibility of the training for the purposes of the TAA Program. In these respects, suitability of training for the individual is encompassed within the several criteria in § 617.22 (a), and compatibility with the program is covered by the various provisions of subpart C of this part which describe the types of training approvable under § 617.22(a) and the limitations thereon.

(ii) *Basis for application*. Whether training is feasible or appropriate at any given time is determined by finding whether, at that time, training suitable for the worker is available, the training is approvable under subpart C of this part including the criteria in § 617.22(a), the worker is so situated as to be able to take full advantage of the training and satisfactorily complete the training, full funding for the training is available from one or more sources in accordance with §§ 617.24 and 617.25, the worker has the financial resources to complete the training when the duration of the training program exceeds the worker's eligibility for TRA, and the training will commence within 30 days of approval.

(2) *Particular applications*. The reasons for any determination that train-

ing is not feasible or is not appropriate shall be in accord with the following:

(i) *Not feasible* because—

(A) The beginning date of approved training is beyond 30 days, as required by the definition for "Enrolled in training" in § 617.11(a)(2)(vii)(D),

(B) Training is not reasonably available to the individual,

(C) Training is not available at a reasonable cost,

(D) Funds are not available to pay the total costs of training, or

(E) Personal circumstances such as health or financial resources, preclude participation in training or satisfactory completion of training,

(F) Other (explain).

(ii) *Not appropriate* because—

(A)(1) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer),

(2) *Planned recall*. For the purpose of determining whether the recall or reemployment of an individual is reasonably foreseeable (for the purposes of this section and § 617.22), either a specific or general type of recall (as set out) shall be deemed to be sufficient.

(i) *Specific recall*. A specific recall is where an individual or group of individuals who was separated from employment is identified and notified by the employer to return to work within a specified time period.

(ii) *General recall*. A general recall is where the employer announces an intention to recall an individual or group of individuals, or by other action reasonably signals an intent to recall, without specifying any certain date or specific time period.

(iii) *Reasonably foreseeable*. For purposes of determining whether training should be denied and a training waiver granted, because of a planned recall that is reasonably foreseeable, such a planned recall includes a specific recall and also includes a general recall (as defined in paragraph (b)(2)(ii)(A)(2) of this section) if the general recall in each individual's case is reasonably expected to occur before the individual exhausts eligibility for any regular UI payments for which the individual is or may become entitled. A general recall,

§ 617.20

20 CFR Ch. V (4–1–14 Edition)

in which the timing of the recall is reasonably expected to occur after the individual's exhaustion of any regular UI to which the individual is or may become entitled, shall not be treated as precluding approval of training, but shall be treated as any other worker separation for these purposes.

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments and the individual cannot assure financial responsibility for completing the training program,

(C) The individual possesses skills for "suitable employment" and there is a reasonable expectation of employment in the foreseeable future, or

(D) Other (explain).

(3) *Waivers and able and available.* An individual who has been furnished a written notice of waiver under paragraph (a)(2) of this section (or denial of waiver under paragraph (a)(3) of this section) shall be subject to all of the requirements of § 617.17(a), which shall continue until the individual is enrolled in a training program as required by paragraph (a)(2)(vii) of § 617.11.

(c) *Waiver review and revocations.* (1) State agencies must have a procedure for reviewing regularly (*i.e.*, every 30 days or less) all waivers issued under this section to individuals, to ascertain that the conditions upon which the waivers were granted continue to exist. In any case in which the conditions have changed—*i.e.*, training has become feasible and appropriate—then the waiver must be revoked, and a written notice of revocation shall be furnished to the individual involved.

(2) In addition to the periodic reviews required by paragraph (c)(1) of this section, State agencies must have a procedure for revoking waivers in individual cases promptly whenever a change in circumstances occurs. For example, a written notice of revocation shall be issued to the individual concurrent with the approval of the training in which the individual has enrolled (if such training is scheduled to commence within 30 days), and shall not be issued prior to such approval.

(3) State agencies may incorporate a revocation section in the waiver form

or on a separate revocation form. Any determination under paragraph (c) of this section shall be a determination to which §§ 617.50 and 617.51 apply. The information included in a written notice of revocation issued under this paragraph (c) shall include all of the information required for written notices issued under paragraph (a)(2) of this section.

(d) *Recordkeeping and reporting.* (1) State agencies must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, as specified in paragraphs (b) and (c) of this section, and report such data to the Department of Labor as requested by the Department.

(2) State agencies are not required to forward copies of individual waiver and revocation notices to the Department of Labor, unless specifically requested by the Department. However, each State agency shall retain a copy of every individual waiver and revocation notice issued by the State, for such period of time as the Department requires.

(Approved by the Office of Management and Budget under control number 1205–0016)

[59 FR 932, Jan. 6, 1994, as amended at 71 FR 35515, June 21, 2006]

Subpart C—Reemployment Services

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* Cooperating State agencies shall be responsible for:

(1) Advising each adversely affected worker to apply for training with the State agency responsible for reemployment services, while the worker is receiving UI payments, and at the time the individual files an initial claim for TRA; and

(2) Referring each adversely affected worker to the State agency responsible for training and other reemployment services in a timely manner.

(b) *State agency responsibilities.* The responsibilities of cooperating State agencies under subpart C of this part include, but are not limited to:

(1) Interviewing each adversely affected worker regarding suitable training opportunities reasonably available